



7/17/07 BdMtg

SRF Policy

Deadline: 5/30/07 Noon

DEPARTMENT  
OF UTILITIES

CITY OF SACRAMENTO  
CALIFORNIA

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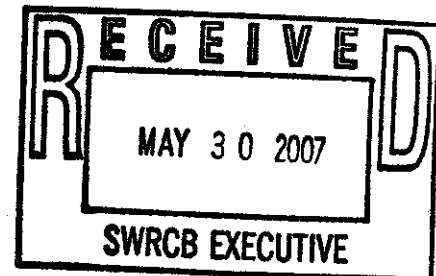
ENGINEERING  
SERVICES DIVISION

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May 30, 2007

(70284:RB:kp)

Ms. Song Her, Clerk  
State Water Resources Control Board  
1001 "T" Street, 24<sup>th</sup> Floor  
Sacramento, California 95814



Dear Ms. Her:

Re: Proposed Amendment to the State Revolving Fund (SRF) Policy

This comment letter is submitted on behalf of the City of Sacramento ("City") in response to the Notice of a Proposed Amendment to the Policy for Implementing the SRF for Construction of Wastewater Treatment Facilities, issued by the State Water Resources Control Board (the "Board") on May 1, 2007.

Procedural Background

The Board considered an agenda item on September 6, 2006, requesting Board approval of a resolution waiving interest penalties for six agencies that inadvertently submitted late project performance certifications for ten SRF projects. The Board's SRF policy requires an agency receiving SRF loan funds to certify that the project being funded meets its performance objectives within 15 months after initiating operations.

The staff report for this item indicated that the City could be subject to an interest penalty for the City's SRF-funded Sump 2/2A Improvement Project of over 46 million dollars, based on the SRF interest penalty formula, that assesses one-tenth-of-one-percent of the outstanding loan balance per day for the period of time that a project completion certification is late. The SRF loan amount for this project was approximately \$37 million.



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The staff report requested waiver of the interest penalties for the City and five other agencies, based on staff's judgment that application of the interest penalties would be "unfairly punitive," because (1) due to personnel changes and loan tracking software development, SWRCB staff failed to provide the agencies with a reminder of the certification requirement, which was standard practice, (2) all the agencies have now fulfilled the requirement, (3) all loan repayments have been made in a timely manner, and (4) there was no evidence to suggest that the agencies intended to ignore or thwart the certification requirement.

As indicated in the Board's May 1 Notice, on September 6 the Board did not approve staff's waiver request, but, instead, directed staff to re-examine the SRF Policy's penalty provision and return with a recommendation for appropriate penalties. The Board's May 1 Notice identifies six options for revising the SRF Policy's penalty provision, plus a seventh option to leave the current provision as is.

#### The City's SRF Loan

As noted, the City's SRF Loan referenced in the State Board's May 1 Notice was for construction of the City's Sump 2/2A Improvement Project (SRF Project No. C-06-4441-120). Sump 2/2A is a major component of the Combined Wastewater Control System (CWCS) that collects sewage and storm drainage from an approximately 15 square mile area in the City of Sacramento and ultimately delivers this combined wastewater to the Regional Wastewater Treatment Plant near Freeport. The City's Sump 2/2A Improvement Project, completed by the City in July of 2001, generally consisted of the construction of a new pump station (Sump 2A) and modification of an existing pump station (Sump 2) in order to increase system capacity and improve the operation of the CWCS. The Sump 2/2A Improvement Project was a central component of the City's overall CWCS Improvement Project that has been approved by the California Regional Water Quality Control Board, Central Valley Region, in order to reduce combined wastewater outflows and overflows in the CWCS.

The City's ongoing commitment to meet these objectives is reflected in the fact that, since 1995, the City has spent approximately \$115 million on projects to rehabilitate the system and to reduce combined wastewater outflows and overflows in the CWCS. In addition to the Sump 2/2A Improvement Project, other CWCS improvements completed in the last 12 years include Sump 1/1A and Pioneer Reservoir Improvements, UC Med Center Regional Storage, U&S Street Parallel Sewer Project, and Land Park Parallel Sewer Project. These efforts have been successful in significantly reducing the incidence of combined wastewater outflows and overflows.

Since inception of the loan, all SRF loan payments for the Sump 2/2A Improvement Project have been made on a timely basis. In addition to the Sump 2/2A Improvement Project, the City obtained SRF loans for four other projects during the same general time period, and has made all loan payments for these projects on a timely basis as well. The City filed project performance certifications for these other projects within the specified time period, but, due to an

unintentional oversight by the staff person who served as project manager for the Sump 2/2A Improvement Project (who by that time was managing other projects), the deadline for filing the project performance certification for the Sump 2/2A Improvement Project passed in September of 2002 without notice by the City or SWRCB staff. When SWRCB staff noticed this oversight and alerted City staff in September, 2006, the City promptly provided the required certification.

#### The Board's Proposed Amendment to the SRF Policy

The City agrees that the penalty provision of the SRF Policy is in dire need of amendment. As noted in the State Board's May 1 Notice, the present penalty provision purports to impose a penalty that is completely disproportionate to the procedural oversight for which the penalty is imposed.

For example, in the City's case, although the SRF loan funds were used properly for their intended purpose and the Sump 2/2A Improvement Project met and continues to meet its performance objectives, City staff inadvertently failed to provide a timely project performance certification. A courtesy reminder from Board staff at the time certainly would have triggered timely compliance, and when such reminder was provided in 2006, the City promptly provided the required paperwork. The fact that State Board staff did not notice anything amiss for over 3 ½ years after the submittal deadline passed certainly suggests that the late certification submittal was wholly a procedural oversight with no substantive effect.

Imposing a monetary penalty for an unintentional procedural oversight makes no sense and does not serve the public interest. Rather than using public funds to pay such a penalty, the City believes that the public interest is better served by allowing the City to continue directing its resources toward important projects to reduce combined wastewater outflows and overflows in the CWCS, as noted above.

For these reasons, the City is opposed to any of the SRF Policy revision options described in the Board's May 1 Notice that would continue to assess monetary penalties for a loan recipient's failure to file a timely certification (Options 4, 5, 7), because there are no substantive consequences resulting from the loan recipient's failure to make a timely filing that are sufficient to justify a monetary penalty in any amount. Further, as noted in the Board's Notice, the legality of monetary penalties in this context is questionable, at best.

The City would support Option 6, completely eliminating the SRF Policy penalty provision, as this apparently would be consistent with the policy in place in the three other States contacted by Board staff. However, if complete removal of these provisions is deemed inappropriate by the Board, the City believes that the best alternative presented in the May 1 Notice is Option 3, to implement an administrative procedure to bring recipients into compliance. As noted in the Notice, this is consistent with the way the SRF Program is administered, and the ultimate threat of terminating a loan should provide more than adequate incentive for loan recipients to comply

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in a timely fashion. As noted above, when the City was notified by Board staff that its project performance certification had not been filed, the City promptly corrected this oversight, and we would expect any other loan recipient to do the same.

The City also would not be opposed to the adoption of Option 2, preferably in conjunction with the adoption of Option 3. However, if Option 2 is adopted, a clarification is needed: As written in the May 1 Notice, this option could be interpreted to require a hold on processing pending or future loan or grant applications, and, if applicable, payments on existing loans and grants, until a loan recipient's certification requirements are met, even if the date for filing such certification has not yet arrived. We assume that the intention of this option is to provide for such a hold on application processing and payments only if the recipient of an existing loan is delinquent in filing a required certification or report. The City requests that this be clarified if Option 2 is adopted.

The City does not support Option 1, which would retain 2.5% of the total loan balance until all required post-project certifications and/or reports are submitted. Depending on the size of the loan, 2.5 % of the loan amount could be a substantial sum, and delaying disbursement of this amount for 12 to 15 months after completion of the project funded by the SRF loan – well after final payments have been made for design and construction of the project – could raise a significant funding problem for the loan recipient, which runs counter to the purposes of the SRF loan program. In view of the effective and reasonable measures presented in Option 3, and, if necessary, Option 2, we do not believe that Option 1 is justified or necessary to achieve the Board's goal of receiving timely documentation of the successful operation of the SRF projects funded by the Board.

The City appreciates the opportunity to submit these comments. Please be assured that the City takes seriously the requirements identified in the SRF loan agreements and is committed to complying with all requirements in the future.

Respectfully submitted,



Gary A. Reents  
Director of Utilities

Cc: Tam Dudoc, Chair, State Water Resources Control Board  
Gary Wolff, P.E., PhD, Board Member  
Dorothy R. Rice, Board Member  
Arthur G. Baggett, Jr, Board Member  
Charles R. Hoppin, Board Member  
Frances Spivy-Weber, Board Member